

CHAPTER 21 - CONSTRUCTION ADVERTISING AND AWARD PROCEDURES

21.1 OVERVIEW

This Chapter outlines the general process for Local Agencies that advertise and award construction contracts under the Department's LAP program. Local Agencies advertising, awarding, and administering Federal-Aid eligible construction contracts must develop and follow procedures and processes in compliance with **Chapters 120 and 337, F.S. and 23 CFR 635**, and attain LAP Certification as described in **Chapter 2** (where applicable).

Local Agencies may advertise and award contracts for construction projects provided the following conditions are met:

- The Local Agency meets federal and state requirements for the advertisement, selection of lowest responsive and responsible bidder, and award of the contract as established through the LAP Certification process.
- The Local Agency has an approved Plans, Specifications & Estimate Package (PS&E); **LAP Construction Checklist Form No. 525-010-44**; and federal authorization has been received.

A responsive bidder is one that meets all the requirements of the advertisement and proposal. A responsible bidder is one that has the financial wherewithal, and is physically organized and equipped to undertake and complete the contract.

The approved PS&E package as described in **Chapter 20** and as required for federal authorization of the construction phase must incorporate the Local Agencies' contract terms and conditions. This Chapter identifies the requirements and guidelines an agency must follow in order to develop the contract terms and conditions of the bid, also known as "front end" or "Division 1" bid documents. The contract terms and conditions development is treated separately in this **Chapter** for the purposes of organization and better distinction of those state and federal requirements related to federally funded construction contracting language.

21.2 DEPARTMENT ISSUED NOTICE TO PROCEED

The District LAP Teams issue a Notice to Proceed (NTP) to the Local Agency for each LAP project. NTPs may not be issued unless both state and federal funding approvals have been received by the District LAP Team. All Local Agencies are required to advertise a project within 30 days of the NTP per the terms of the **LAP Agreement (7B)**. Timely contract award is critical for maintaining financial activity on federal projects per **Chapter 10** and **23 CFR 630.106(a)(5)-(6)**.

All contract awards shall be concurred with by the District LAP Administrator prior to contract execution as detailed in the following sections.

21.3 PREPARATION OF THE PROJECT BID PROPOSAL

Although a project is funded through the Department, the Local Agency prepares its bid documents following its standard procurement process. The Local Agency is responsible for compliance with all local, state, and federal requirements. The [Local Agency Program Checklist for Construction Contracts Form No. 525-010-44 \(herein referred to as the LAP Construction Checklist\)](#) is used by the Department to monitor compliance with identified requirements. The LAP Construction Checklist is inclusive of the most common state and federal requirements or those that present the highest risk to eligibility to receive federal funds and is described in additional detail in **Section 21.3.4**. FHWA also posts a matrix of contract provisions relevant to both federally funded construction and service contracts located here: <http://www.fhwa.dot.gov/construction/contracts/provisions.cfm>.

21.3.1 Bundling Multiple Projects

Multiple Federal-Aid projects may be bundled into one advertisement and contract award as a cost and time savings. Multiple projects of the same work type in one jurisdiction and/or proximity of projects are two of the most common ways to bundle projects for advertising and award. Contact the District LAP Administrator for additional information.

21.3.2 Bid Alternates

Bid alternates are allowed as a mechanism to control costs and/or time on a project. Additional information on alternative contracting may be found in **Chapter 9** and the **FHWA Contract Administration Core Curriculum Manual** or by contacting the District LAP Administrator.

21.3.3 Contractor Qualifications

The Local Agency is prohibited from establishing any procedures or requirements for qualification or licensing of contractors that might restrict competition, prevent the submission of bids, or prohibit consideration of bids submitted by any responsible contractor. This applies whether the contractor is a resident or a nonresident of the State of Florida.

The Local Agency shall certify that the [Department's prequalified contractors](#) established in accordance with **Rule 14-22 F.A.C.** will be used to construct LAP projects located on the National Highway System (NHS), the State Highway System (SHS), or if the project is a Class B or C project as defined in **Chapter 19.4**. However, when the project is on the NHS or SHS and the contract is estimated to cost less than \$250,000, then a Department prequalified contractor is not required, per the **Department's Standard Specification 2-1, Prequalification of Bidders**. If a project bid is estimated to cost less than \$250,000, but bids come in higher than the \$250,000 threshold; the agency is not required to re-advertise the project if prequalification was waived in the initial bid.

The Local Agency is responsible for the prequalification of prospective bidders on local roadways ("off-system"). They may use their agency prequalification procedure, or the Department's prequalification procedure (**Rule 14-22 F.A.C.**). There shall be no procedure or requirement for bonding, insurance, prequalification, qualification, or licensing to prohibit the contractor from submitting or awarding a bid based on residency or tax receipts where the work is to be performed. Contractors must meet state and federal bid performance and payment bonding requirements under **2 CFR 200.325** and [255.05 F.S.](#)

When a Local Agency does not prequalify prospective bidders, the Local Agency must include enough information in the bid package to enable the bidders to provide evidence of its capability to perform the work. Qualifications requested in the construction bid package must be fair and consistent. Qualifications evaluations performed by Local Agency's should consider experience, personnel, equipment, financial resources, and performance record, or some combination thereof.

21.3.4 Federal and State Construction Contracting Requirements

All items identified on the [LAP Construction Checklist](#) must be addressed when compiling the construction bid package. The Checklist is inclusive of the most common state and federal requirements or those that present the highest risk to eligibility to receive federal funds. The Local Agency is responsible for compliance with all local, state, and federal requirements.

As part of the continuing effort to streamline processes and support statewide best practices, **Division One Specifications for Local Agencies** are documents available for incorporation into LAP construction project bid packages. The documents, available in Microsoft Word 1997-2003 format (.doc), include standard contract language for items found on the **LAP Construction Checklist** that also appear in the **FDOT Standard Specifications for Road and Bridge Construction**. FDOT Specifications are reviewed by FHWA and FDOT Legal and meet the contractual requirements for use on Federal-Aid Highway Program projects. Use of the Division One documents is not mandatory, but may save the Local Agency time and effort in researching and developing contract language that meets state and federal requirements. The local agencies must determine if adaptation of the Department's specifications qualify for an engineer's sign and seal under **Chapter 471 F.S.**

Two versions of the Division One Specifications for Local Agencies document are available for use on LAP projects:

1. **LADIV1-OFFSYS** is for off-system (local roadway) projects.
2. **LADIV1-ONSYS** is for use on State or National Highway System projects (SHS/NHS) and Class B and C projects. This version includes the required language for Division 2 and Division 3 specifications for on-system projects.

The documents do not satisfy all requirements of the **LAP Construction Checklist**, but do compile requirements found in the **FDOT Standard Specifications for Road and Bridge Construction** published by the Department. In addition, not all of the FDOT Specifications included in the documents are required for each LAP project. Local agencies may omit those non-applicable requirements as needed. References to Local Agency processes or procedures may need to be added for consistency with the bid package. The Local Agency is responsible for addressing all conflicts between their construction specifications and what is provided in the Division One documents!

SPECS ON THE WEB
FLORIDA DEPARTMENT OF TRANSPORTATION

Select Specifications:
Below are the FDOT files available for Local Agency use in preparing specifications documents. Click on the check box in the far left column to select the files. When all desired files are selected, click on Merge Specifications at the top of this screen. The list that is generated may be viewed on the screen or saved to your local computer. The document generated will not be saved within this application.

[Merge Specifications](#)
(Click on the top)

Select	Description	Usage Notes
<input type="checkbox"/>	POLYMER MODIFIED CHIP SEAL (Rev. 8/16/2014) (F.A. 108176)	For Local Agency Use Only. (This specification was not developed and is not owned by the FDOT.)
<input type="checkbox"/>	BITUMINOUS FOG SEAL (Rev. 1/20/2014) (F.A. 108176)	For Local Agency Use Only. (This specification was not developed and is not owned by the FDOT.)
<input type="checkbox"/>	BITUMINOUS CHIP SEAL (Rev. 1/20/2014) (F.A. 108176)	For Local Agency Use Only. (This specification was not developed and is not owned by the FDOT.)
<input type="checkbox"/>	WATER SUBGRADING (Rev. 1/20/2014) (F.A. 108176)	For Local Agency Use Only. (This specification was not developed and is not owned by the FDOT.)
<input type="checkbox"/>	WATER SUBGRADING (Rev. 1/20/2014) (F.A. 108176)	For Local Agency Use Only. (This specification was not developed and is not owned by the FDOT.)
<input type="checkbox"/>	LADIV1-OFFSYS LOCAL AGENCY DIVISION 1 SPECIFICATIONS FOR OFF-SYSTEM LAP PROJECTS (Rev. 8/16/2014) (F.A. 108176)	FOR ALL LAP PROJECTS OFF-SYSTEM
<input type="checkbox"/>	LADIV1-ONSYS LOCAL AGENCY DIVISION 1 SPECIFICATIONS FOR ON-SYSTEM LAP PROJECTS (Rev. 8/16/2014) (F.A. 108176)	FOR ALL LAP PROJECTS ON-SYSTEM
<input type="checkbox"/>	EXTRAORDINARY AND RELATED OPERATIONS FOR LAP OFF-SYSTEM	

The document files are located on the Departments 'Specs on the Web' at: <https://www2.dot.state.fl.us/SpecificationsPackage/Package/Workbook/LAPSpecificationSelection.aspx>. Specs on the Web is a web application that creates specification packages for transportation projects including provisions that are required with Federal-Aid projects. Each file is downloadable and may be formatted or edited as needed. To download the document, visit the website and select the 'Browse' hyperlink associated with either document. Both document files will be updated bi-annually by Central Office during the rollout of the **FDOT Standard Specifications for Road and Bridge Construction**, which is also published on a bi-annual basis.

In addition to contracting language identified in the **LAP Construction Checklist**, the Local Agencies are also required to specify the bid terms in compliance with state and/or federal requirements. Some general requirements are listed here.

- Each bid shall be made on the forms provided by the Local Agency and shall be signed by the bidder with the signature in full.
- If a corporation makes the proposal, the officer(s) with authority to sign contracts shall sign the proposal in the name of the corporation.
- The address of the bidder should be printed on the proposal.
- A unit or lump sum price, as required in the proposal, shall be submitted on each item of work included in the group or division for which bids are requested.
- Each unit or lump sum price shall be written in figures.
- Causes for bid rejection must be clearly defined by the agency. Common causes listed in state and federal guidelines include:
 - ❖ any price omission on items shown in the proposal form
 - ❖ any condition, limitation, or provision that is not officially invited in the proposal
 - ❖ failure by the contractor to meet project qualifications
 - ❖ Contractors suspended, debarred and/or otherwise disqualified from bidding on federal and/or state contracts

Section 21.3 is not inclusive of all local, state, and federal requirements, laws, and rules the Local Agency may need to comply with. It would be impossible to republish all of the

existing requirements within this **Manual**. The Department certifies a Local Agency to advertise, award, and administer LAP construction contracts with the reasonable expectation that the Local Agency develops procedures and processes in compliance with local, state, and federal requirements including **Chapters 120 and 337, F.S.** and **23 CFR 635**. Additional assistance may be requested from the District and/or State Local Programs Administrators as needed.

21.4 ADVERTISING OF THE PROJECT

Federal-Aid construction projects shall be advertised for a minimum of three (3) weeks before the opening of bids. The three (3) week advertising period begins when the first of two (2) advertisements is published. **337.11(3)(a) F.S.** requires two newspaper advertisements for all contracts under \$250,000 or any contract less than \$500,000 that has prequalification requirements waived. Provided the Local Agency places the advertisement for all contracts under \$250K in a newspaper and that advertisement runs for at least once a week for no less than 2 consecutive weeks, and the first publication of the advertisement is placed in the newspaper within 14 days of the letting, compliance with the statutory requirement has been met. Coverage should be proportionate to the size of the project. The Local Agency may opt for additional notification.

Bidding opportunities will be given on a nondiscriminatory basis to all qualified bidders regardless of State or Local Agency boundaries, race, gender, color, religion, age, disability, marital status, or national origin.

No bidder will be disqualified or prevented from competitive bidding by restricting the purchase of a surety bond or insurance policy from any surety or insurer outside the state who is authorized to do business with the State of Florida. **Negotiations with contractors are not permitted during the advertisement, award, or execution periods of the construction contracting process.**

Department cost estimates are confidential per [337.168, F.S. Confidentiality of official estimates, identities of potential bidders, and bid analysis and monitoring system.](#)—

- (1) *A document or electronic file revealing the official cost estimate of the department of a project is confidential and exempt from the provisions of s. [119.07\(1\)](#) until the contract for the project has been executed or until the project is no longer under active consideration.*

It is up to the Local Agency's legal counsel to determine if the agency is required to disclose the cost estimate under Florida's broad public records laws. The Federal regulations do not stipulate confidentiality. They allow the states to make the decision to

keep estimates confidential.

21.4.1 Bid Addendums

If an addendum is necessary during the advertising period, the Local Agency shall submit the addendum to the District LAP Administrator for review and concurrence prior to publication. On FHWA oversight projects, the District LAP Administrator will submit the addendum to FHWA for approval per the oversight plan. Bidders must present written notice of receipt of each addendum received along with the bid.

21.4.2 Davis-Bacon Act Wage Rate Tables

The contractors must pay Davis-Bacon Act predetermined wage rates to all covered workers on Federal-Aid construction projects exceeding \$2,000 on roadways that are functionally classified as Federal-Aid highways. The Davis Bacon requirements do not apply to force account work performed by Local Agency forces. The application of wage rates on a LAP project depends on the relationship or linkage to a Federal-Aid Highway and the federal fund types (e.g. Transportation Alternatives, Highway Safety) . Additional information on wage rates may be found in **Chapter 15**.

The wage rates used will reflect the latest rates approved by the U.S. Department of Labor (USDOL). The effective date for Federal rates is determined as follows:

- A. Federal Wage Rates. This data is received from the USDOL, who publishes it in a document entitled "General Wage Determinations Issued under the Davis-Bacon and Related Acts." The USDOL issues modifications weekly. To minimize the possibility of out-of-date federal wage rates at the time of bid opening, the Local Agency developing the construction documents should access the wage rates through the following link seven (7) working days before the advertising date:
<http://www.dot.state.fl.us/construction/Wage.shtm>
- B. Modifications published by the USDOL less than 10 days before the opening of bids will be effective unless the Local Agency determines that there is not sufficient time before bid opening to notify bidders. The Local Agency should insert a report of the determination in the contract file. No report is necessary if the notification is published after bid opening.
- C. If the contract has not been awarded within 90 days after bid opening, any modification published before award will be effective unless the Local Agency receives approval of an extension of the 90-day period from the

USDOL. The Local Agency must support this request with factual evidence that the extension is necessary, proper, and in the public's best interest.

21.5 BID OPENING & EVALUATION

The Local Agency will publicly open and announce all bids it receives by total amount in accordance with the terms of the advertisement. If any bid received is not read, the Local Agency must publicly announce the name of the bidder and the reason for not reading the bid at the bid opening.

The Local Agency's contracting office must submit adequate justification for rejecting any bids to the District LAP Administrator. The District LAP Administrator may also provide the justification to the State Local Program Administrator and/or the FHWA as needed.

21.5.1 Evaluation of Bids for Award

After the bid opening, the Local Agency must verify all bidders are both responsive and responsible as defined in **Section 21.1**. The agency verifies all bidders have properly submitted and executed all required bid documents and forms. The Local Agency reviews all bids for accuracy, checks for conformance to the engineer's estimate, evaluates unbalanced bid items, and confirms tabulations.

The Local Agency shall prepare a tabulation of bids showing the item details and total bid for all responsible bids. A responsible Local Agency official should certify that these tabulations are correct and also perform unbalanced bid analyses as needed per **23 CFR 635**. It is important that the Local Agency thoroughly reviews all submitted individual surety bonds in order to establish their authenticity.

21.5.2 Bid Rejection

The Local Agency may reject the bids in the following circumstances:

- (a) where the low bid differs from the engineer's estimate by an unreasonable amount (reasonable conformance pursuant to **23 CFR 635.144(c)**)
- (b) where obvious unbalancing of unit prices has occurred, or
- (c) where competition is considered to be inadequate relative to the size, type, and location of the project.

The Local Agency shall notify the District LAP Administrator when bids are rejected. If all bids are rejected, the project may be re-advertised and will remain eligible for federal

reimbursement if all federal requirements continue to be met. **Negotiations with contractors are not permitted during the advertisement, award, or execution period of the contracting process.**

21.5.3 Bid Concurrence from the Department

The Local Agency shall submit the bid tabulation to the District LAP Administrator along with all back up documentation and/or justifications needed to support the bid award to the lowest responsive, responsible bidder. If the Local Agency determines that the lowest bidder is not qualified, it must document this information before seeking District concurrence to award to the next lowest responsive, responsible bidder.

The District LAP administrator shall review and concur with the award recommendation in writing. FHWA may also need to provide concurrence on oversight projects. Bid concurrence documentation must be uploaded to LAPIT.

21.5.4 Award Exceptions

The Local Agency must document exceptional circumstances of an award in its project files. The Local Agency may award the contract, with District concurrence, if there are exceptional circumstances such as those listed below:

- A. Where the competition is adequate relative to the size, type, and location of the project, but less than 3 bids were received.
- B. Where the project is essential to the public interest (safety or public, emergency repair, etc.) and deferring it would endanger that interest.
- C. Where the engineer's estimate is clearly in error by a significant amount.
- D. Where re-advertising would not likely result in lower bids because the plans and specifications already contain all possible cost reduction measures.

Before awarding a project which exceeds the engineer's estimate by a significant amount, the Local Agency must seek concurrence from the District LAP Administrator. The LAP Agreement may be supplemented if the award amount is greater than the authorized amount at the discretion of the District Program Management Administrator and the LAP Administrator. Details regarding supplemental agreements and availability of additional funds are located in **Chapter 5**.

21.6 CONTRACT AWARD AND EXECUTION

Before notifying the contractor of the award, the Local Agency must post its intent to award in accordance with the local rules or ordinances of that agency and must have received the District's concurrence to award. The Local Agency is also responsible for resolving any protests that are filed.

The Local Agency will prepare and forward an official award letter to the contractor with a copy to the District LAP Administrator. All letters must be identified in the subject area with the following: 1) Financial Project Number, 2) Federal Aid Number, and 3) County in which the project is located.

State law requires that a Local Agency may not carry out a contract with any contractor who is not registered or licensed in accordance with State laws. A Local Agency is NOT permitted to bid in competition or enter into subcontracts with private contractors for construction of Federal-Aid projects. The designated Local Agency office prepares the necessary contract documents and forwards them for execution by the successful bidder and the proper officials of the Local Agency. The Local Agency must submit a copy of the executed contract to the District LAP Administrator in LAPIT.

21.7 RESOURCES

It is the Local Agency's responsibility to incorporate construction contracting requirements and periodically verify the contract assurances and/or forms are up to date. Links to all forms, sample forms, templates, and other contract documentation are found on the LAP Website Forms Page located here:

<http://www.dot.state.fl.us/programmanagement/LAP/Forms/LapForms.shtm>.

Additional links to required forms and contract assurances are found embedded in the [LAP Construction Checklist Form No. 525-010-44](#).

Other Form Links:

[Order 5020.2 Nondiscrimination Contract Assurances \(Appendices A/E\)](#)

[LAP Certification of Current Capacity Form No. 525-010-46](#)

[Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion](#)

[Lobbying Certification Form No. 375-030-33](#)

[Disclosure of Lobbying Form No. 375-030-34](#)

[FHWA 1273 Required Contract Provisions for Federal-Aid Construction Contracts](#)

[Non-Collusion Declaration of Compliance Form No. 575-060-13](#)

Specs on the Web:

<https://www2.dot.state.fl.us/SpecificationsPackage/Package/Workbook/LAPSpecificationSelection.aspx>.